

FIRST REGULAR SESSION

SENATE BILL NO. 30

97TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR BROWN.

Pre-filed December 1, 2012, and ordered printed.

TERRY L. SPIELER, Secretary.

0306S.01I

AN ACT

To repeal sections 290.210, 290.220, 290.230, 290.240, 290.250, 290.260, 290.262, 290.263, 290.265, 290.270, 290.280, 290.290, 290.300, 290.305, 290.315, 290.320, 290.325, 290.330, 290.335, and 290.340, RSMo, relating to public contracts.

Be it enacted by the General Assembly of the State of Missouri, as follows:

Section A. Sections 290.210, 290.220, 290.230, 290.240, 290.250, 290.260, 290.262, 290.263, 290.265, 290.270, 290.280, 290.290, 290.300, 290.305, 290.315, 290.320, 290.325, 290.330, 290.335, and 290.340, RSMo, are repealed, to read as follows:

[290.210. As used in sections 290.210 to 290.340, unless the context indicates otherwise:

(1) "Construction" includes construction, reconstruction, improvement, enlargement, alteration, painting and decorating, or major repair.

(2) "Department" means the department of labor and industrial relations.

(3) "Locality" means the county where the physical work upon public works is performed, except that if there is not available in the county a sufficient number of competent skilled workmen to construct the public works efficiently and properly, "locality" may include two or more counties adjacent to the one in which the work or construction is to be performed and from which such workers may be obtained in sufficient numbers to perform the work, and that, with respect to contracts with the state highways and

EXPLANATION—Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.

16 transportation commission, "locality" may be construed to include
17 two or more adjacent counties from which workmen may be
18 accessible for work on such construction.

19 (4) "Maintenance work" means the repair, but not the
20 replacement, of existing facilities when the size, type or extent of
21 the existing facilities is not thereby changed or increased.

22 (5) "Prevailing hourly rate of wages" means the wages paid
23 generally, in the locality in which the public works is being
24 performed, to workmen engaged in work of a similar character
25 including the basic hourly rate of pay and the amount of the rate
26 of contributions irrevocably made by a contractor or subcontractor
27 to a trustee or to a third person pursuant to a fund, plan or
28 program, and the amount of the rate of costs to the contractor or
29 subcontractor which may be reasonably anticipated in providing
30 benefits to workmen and mechanics pursuant to an enforceable
31 commitment to carry out a financially responsible plan or program
32 which was communicated in writing to the workmen affected, for
33 medical or hospital care, pensions on retirement or death,
34 compensation for injuries or illness resulting from occupational
35 activity, or insurance to provide any of the foregoing, for
36 unemployment benefits, life insurance, disability and sickness
37 insurance, accident insurance, for vacation and holiday pay, for
38 defraying costs of apprenticeship or other similar programs, or for
39 other bona fide fringe benefits, but only where the contractor or
40 subcontractor is not required by other federal or state law to
41 provide any of the benefits; provided, that the obligation of a
42 contractor or subcontractor to make payment in accordance with
43 the prevailing wage determinations of the department, insofar as
44 sections 290.210 to 290.340 are concerned, may be discharged by
45 the making of payments in cash, by the making of irrevocable
46 contributions to trustees or third persons as provided herein, by
47 the assumption of an enforceable commitment to bear the costs of
48 a plan or program as provided herein, or any combination thereof,
49 where the aggregate of such payments, contributions and costs is
50 not less than the rate of pay plus the other amounts as provided
51 herein.

52 (6) "Public body" means the state of Missouri or any officer,
53 official, authority, board or commission of the state, or other
54 political subdivision thereof, or any institution supported in whole
55 or in part by public funds.

56 (7) "Public works" means all fixed works constructed for
57 public use or benefit or paid for wholly or in part out of public
58 funds. It also includes any work done directly by any public utility
59 company when performed by it pursuant to the order of the public
60 service commission or other public authority whether or not it be
61 done under public supervision or direction or paid for wholly or in
62 part out of public funds when let to contract by said utility. It does
63 not include any work done for or by any drainage or levee district.

64 (8) "Workmen" means laborers, workmen and mechanics.]

 [290.220. It is hereby declared to be the policy of the state
2 of Missouri that a wage of no less than the prevailing hourly rate
3 of wages for work of a similar character in the locality in which the
4 work is performed shall be paid to all workmen employed by or on
5 behalf of any public body engaged in public works exclusive of
6 maintenance work.]

 [290.230. 1. Not less than the prevailing hourly rate of
2 wages for work of a similar character in the locality in which the
3 work is performed, and not less than the prevailing hourly rate of
4 wages for legal holiday and overtime work, shall be paid to all
5 workmen employed by or on behalf of any public body engaged in
6 the construction of public works, exclusive of maintenance
7 work. Only such workmen as are directly employed by contractors
8 or subcontractors in actual construction work on the site of the
9 building or construction job shall be deemed to be employed upon
10 public works.

11 2. When the hauling of materials or equipment includes
12 some phase of construction other than the mere transportation to
13 the site of the construction, workmen engaged in this dual capacity
14 shall be deemed employed directly on public works.]

 [290.240. 1. The department shall inquire diligently as to
2 any violation of sections 290.210 to 290.340, shall institute actions
3 for penalties herein prescribed, and shall enforce generally the

4 provisions of sections 290.210 to 290.340.

5 2. The department may establish rules and regulations for
6 the purpose of carrying out the provisions of sections 290.210 to
7 290.340.]

[290.250. 1. Every public body authorized to contract for or
2 construct public works before advertising for bids or undertaking
3 such construction shall request the department to determine the
4 prevailing rates of wages for workmen for the class or type of work
5 called for by the public works, in the locality where the work is to
6 be performed. The department shall determine the prevailing
7 hourly rate of wages in the locality in which the work is to be
8 performed for each type of workman required to execute the
9 contemplated contract and such determination or schedule of the
10 prevailing hourly rate of wages shall be attached to and made a
11 part of the specifications for the work. The public body shall then
12 specify in the resolution or ordinance and in the call for bids for
13 the contract what is the prevailing hourly rate of wages in the
14 locality for each type of workman needed to execute the contract
15 and also the general prevailing rate for legal holiday and overtime
16 work. It shall be mandatory upon the contractor to whom the
17 contract is awarded and upon any subcontractor under him to pay
18 not less than the specified rates to all workmen employed by them
19 in the execution of the contract. The public body awarding the
20 contract shall cause to be inserted in the contract a stipulation to
21 the effect that not less than the prevailing hourly rate of wages
22 shall be paid to all workmen performing work under the
23 contract. The employer shall forfeit as a penalty to the state,
24 county, city and county, city, town, district or other political
25 subdivision on whose behalf the contract is made or awarded one
26 hundred dollars for each workman employed, for each calendar day,
27 or portion thereof, such workman is paid less than the said
28 stipulated rates for any work done under said contract, by him or
29 by any subcontractor under him, and the said public body awarding
30 the contract shall cause to be inserted in the contract a stipulation
31 to this effect. It shall be the duty of such public body awarding the
32 contract, and its agents and officers, to take cognizance of all

complaints of all violations of the provisions of sections 290.210 to 290.340 committed in the course of the execution of the contract, and, when making payments to the contractor becoming due under said contract, to withhold and retain therefrom all sums and amounts due and owing as a result of any violation of sections 290.210 to 290.340. It shall be lawful for any contractor to withhold from any subcontractor under him sufficient sums to cover any penalties withheld from him by the awarding body on account of said subcontractor's failure to comply with the terms of sections 290.210 to 290.340, and if payment has already been made to him, the contractor may recover from him the amount of the penalty in a suit at law.

2. In determining whether a violation of sections 290.210 to 290.340 has occurred, and whether the penalty under subsection 1 of this section shall be imposed, it shall be the duty of the department to investigate any claim of violation. Upon completing such investigation, the department shall notify the employer of its findings. If the department concludes that a violation of sections 290.210 to 290.340 has occurred and a penalty may be due, the department shall notify the employer of such finding by providing a notice of penalty to the employer. Such penalty shall not be due until forty-five days after the date of the notice of the penalty.

3. The employer shall have the right to dispute such notice of penalty in writing to the department within forty-five days of the date of the notice. Upon receipt of this written notice of dispute, the department shall notify the employer of the right to resolve such dispute through arbitration. The state and the employer shall submit to an arbitration process to be established by the department by rule, and in conformance with the guidelines and rules of the American Arbitration Association or other arbitration process mutually agreed upon by the employer and the state. If at any time prior to the department pursuing an enforcement action to enforce the monetary penalty provisions of subsection 1 of this section against the employer, the employer pays the back wages as determined by either the department or the arbitrator, the department shall be precluded from initiating any enforcement

69 action to impose the monetary penalty provisions of subsection 1 of
70 this section.

71 4. If the employer fails to pay all wages due as determined
72 by the arbitrator within forty-five days following the conclusion of
73 the arbitration process, or if the employer fails to exercise the right
74 to seek arbitration, the department may then pursue an
75 enforcement action to enforce the monetary penalty provisions of
76 subsection 1 of this section against the employer. If the court
77 orders payment of the penalties as prescribed in subsection 1 of
78 this section, the department shall be entitled to recover its actual
79 cost of enforcement from such penalty amount.

80 5. Nothing in this section shall be interpreted as precluding
81 an action for enforcement filed by an aggrieved employee as
82 otherwise provided in law.]

[290.260. 1. The department, as it deems necessary, shall
2 from time to time investigate and determine the prevailing hourly
3 rate of wages in the localities. A determination applicable to every
4 locality to be contained in a general wage order shall be made
5 annually on or before July first of each year for the Missouri state
6 highways and transportation commission and shall remain in effect
7 until superseded by a new general wage order. In determining
8 prevailing rates, the department shall ascertain and consider the
9 applicable wage rates established by collective bargaining
10 agreements, if any, and the rates that are paid generally within the
11 locality.

12 2. A certified copy of the determination so made shall be
13 filed immediately with the secretary of state and with the
14 department in Jefferson City. Copies shall be supplied by the
15 department to all persons requesting them within ten days after
16 the filing.

17 3. At any time within thirty days after the certified copies
18 of the determinations have been filed with the secretary of state
19 and the department, any person who is affected thereby may object
20 in writing to the determination or the part thereof that he deems
21 objectionable by filing a written notice with the department, stating
22 the specific grounds of the objection.

23 4. Within thirty days of the receipt of the objection, the
24 department shall set a date for a hearing on the objection. The
25 date for the hearing shall be within sixty days of the receipt of the
26 objection. Written notice of the time and place of the hearing shall
27 be given to the objectors at least ten days prior to the date set for
28 the hearing.

29 5. The department at its discretion may hear each written
30 objection separately or consolidate for hearing any two or more
31 written objections. At the hearing the department shall first
32 introduce in evidence the investigation it instituted and the other
33 facts which were considered at the time of the original
34 determination which formed the basis for its determination. The
35 department, or the objector, or any interested party, thereafter may
36 introduce any evidence that is material to the issues.

37 6. Within twenty days of the conclusion of the hearing, the
38 department must rule on the written objection and make the final
39 determination that it believes the evidence warrants. Immediately,
40 the department shall file a certified copy of its final determination
41 with the secretary of state and with the department and shall serve
42 a copy of the final determination on all parties to the proceedings
43 by personal service or by registered mail.

44 7. This final decision of the department of the prevailing
45 wages in the locality is subject to review in accordance with the
46 provisions of chapter 536. Any person affected, whether or not the
47 person participated in the proceedings resulting in the final
48 determination, may have the decision of the department
49 reviewed. The filing of the final determination with the secretary
50 of state shall be considered a service of the final determination on
51 persons not participating in the administrative proceedings
52 resulting in the final determination.

53 8. At any time before trial any person affected by the final
54 determination of the department may intervene in the proceedings
55 to review under chapter 536 and be made a party to the
56 proceedings.

57 9. All proceedings in any court affecting a determination of
58 the department under the provisions of sections 290.210 to 290.340

59 shall have priority in hearing and determination over all other civil
60 proceedings pending in the court, except election contests.]

2 [290.262. 1. Except as otherwise provided in section
3 290.260, the department shall annually investigate and determine
4 the prevailing hourly rate of wages in each locality for each
5 separate occupational title. A final determination applicable to
6 every locality to be contained in an annual wage order shall be
7 made annually on or before July first of each year and shall remain
8 in effect until superseded by a new annual wage order or as
9 otherwise provided in this section. In determining prevailing rates,
10 the department shall ascertain and consider the applicable wage
11 rates established by collective bargaining agreements, if any, and
12 the rates that are paid generally within the locality, and shall, by
13 March tenth of each year, make an initial determination for each
14 occupational title within the locality.

15 2. A certified copy of the initial determinations so made
16 shall be filed immediately with the secretary of state and with the
17 department in Jefferson City. Copies shall be supplied by the
18 department to all persons requesting them within ten days after
19 the filing.

20 3. At any time within thirty days after the certified copies
21 of the determinations have been filed with the secretary of state
22 and the department, any person who is affected thereby may object
23 in writing to a determination or a part thereof that he deems
24 objectionable by filing a written notice with the department, stating
25 the specific grounds of the objection. If no objection is filed, the
26 determination is final after thirty days.

27 4. After the receipt of the objection, the department shall
28 set a date for a hearing on the objection. The date for the hearing
29 shall be within sixty days of the receipt of the objection. Written
30 notice of the time and place of the hearing shall be given to the
31 objectors at least ten days prior to the date set for the hearing.

32 5. The department at its discretion may hear each written
33 objection separately or consolidate for hearing any two or more
34 written objections. At the hearing the department shall first
introduce in evidence the investigation it instituted and the other

35 facts which were considered at the time of the original
36 determination which formed the basis for its determination. The
37 department, or the objector, or any interested party, thereafter may
38 introduce any evidence that is material to the issues.

39 6. Within twenty days of the conclusion of the hearing, the
40 department shall rule on the written objection and make the final
41 determination that it believes the evidence warrants. Immediately,
42 the department shall file a certified copy of its final determination
43 with the secretary of state and with the department and shall serve
44 a copy of the final determination on all parties to the proceedings
45 by personal service or by registered mail.

46 7. This final decision of the department of the prevailing
47 wages in the locality for each occupational title is subject to review
48 in accordance with the provisions of chapter 536. Any person
49 affected, whether or not the person participated in the proceedings
50 resulting in the final determination, may have the decision of the
51 department reviewed. The filing of the final determination with
52 the secretary of state shall be considered a service of the final
53 determination on persons not participating in the administrative
54 proceedings resulting in the final determination.

55 8. At any time before trial any person affected by the final
56 determination of the department may intervene in the proceedings
57 to review under chapter 536 and be made a party to the
58 proceedings.

59 9. Any annual wage order made for a particular
60 occupational title in a locality may be altered once each year, as
61 provided in this subsection. The prevailing wage for each such
62 occupational title may be adjusted on the anniversary date of any
63 collective bargaining agreement which covers all persons in that
64 particular occupational title in the locality in accordance with any
65 annual incremental wage increases set in the collective bargaining
66 agreement. If the prevailing wage for an occupational title is
67 adjusted pursuant to this subsection, the employee's representative
68 or employer in regard to such collective bargaining agreement shall
69 notify the department of this adjustment, including the effective
70 date of the adjustment. The adjusted prevailing wage shall be in

71 effect until the next final annual wage order is issued pursuant to
72 this section. The wage rates for any particular job, contracted and
73 commenced within sixty days of the contract date, which were set
74 as a result of the annual or revised wage order, shall remain in
75 effect for the duration of that particular job.

76 10. In addition to all other reporting requirements of
77 sections 290.210 to 290.340, each public body which is awarding a
78 contract for a public works project shall, prior to beginning of any
79 work on such public works project, notify the department, on a
80 form prescribed by the department, of the scope of the work to be
81 done, the various types of craftsmen who will be needed on the
82 project, and the date work will commence on the project.]

2 [290.263. The hourly wages to be paid as prescribed in
3 section 290.250 to workmen upon public works shall not be less
4 than the minimum wage specified under Section 6(a)(1) of the Fair
Labor Standards Act of 1938, as amended.]

2 [290.265. A clearly legible statement of all prevailing
3 hourly wage rates to be paid to all workmen employed in order to
4 execute the contract and employed on the construction of the public
5 works shall be kept posted in a prominent and easily accessible
6 place at the site thereof by each contractor and subcontractor
7 engaged in the public works projects under the provisions of this
8 law and such notice shall remain posted during the full time that
any such workman shall be employed on the public works.]

2 [290.270. The finding of the department ascertaining and
3 declaring the prevailing hourly rate of wages shall be final for the
4 locality, unless reviewed under the provisions of sections 290.210
5 to 290.340. Nothing in sections 290.210 to 290.340, however, shall
6 be construed to prohibit the payment to any workman employed on
7 any public work of more than the prevailing rate of
8 wages. Nothing in sections 290.210 to 290.340 shall be construed
9 to limit the hours of work which may be performed by any
workman in any particular period of time.]

2 [290.280. The authorized representative of the department
3 may administer oaths, take or cause to be taken the depositions of
witnesses, and require by subpoena the attendance and testimony

4 of witnesses and the production of all books, records, and other
5 evidence relative to any matter under investigation or
6 hearing. The subpoena shall be signed and issued by the
7 department's authorized representative. In case of failure of any
8 person to comply with any subpoena lawfully issued under this
9 section, or on the refusal of any witness to produce evidence or to
10 testify to any matter regarding which he may be lawfully
11 interrogated, the authorized representative of the department may
12 proceed to enforce obedience to the subpoenas in the manner
13 provided by section 536.077 for administrative agencies. The
14 authorized representative of the department shall have the power
15 to certify to official acts.]

[290.290. 1. The contractor and each subcontractor engaged
2 in any construction of public works shall keep full and accurate
3 records clearly indicating the names, occupations and crafts of
4 every workman employed by them in connection with the public
5 work together with an accurate record of the number of hours
6 worked by each workman and the actual wages paid therefor. The
7 payroll records required to be so kept shall be open to inspection by
8 any authorized representative of the contracting public body or of
9 the department at any reasonable time and as often as may be
10 necessary and such records shall not be destroyed or removed from
11 the state for the period of one year following the completion of the
12 public work in connection with which the records are made.

13 2. Each contractor and subcontractor shall file with the
14 contracting public body upon completion of the public work and
15 prior to final payment therefor an affidavit stating that he had
16 fully complied with the provisions and requirements of this
17 chapter, and no public body shall be authorized to make final
18 payment until such affidavit is filed therewith in proper form and
19 order.

20 3. Each contractor and subcontractor engaged in any
21 construction of public works shall have its name, acceptable
22 abbreviation or recognizable logo and the name of the city and
23 state of the mailing address of the principal office of the company,
24 on each motor vehicle and motorized self-propelled piece of

equipment which is used in connection with such public works project during the time the contractor or subcontractor is engaged on such project. The sign shall be legible from a distance of twenty feet but the size of the lettering need not be larger than two inches. In cases where equipment is leased or where affixing a legible sign to the equipment is impractical, the contractor may place a temporary stationary sign, with the information required pursuant to this subsection, at the main entrance of the construction project in place of affixing the required information on the equipment so long as such sign is not in violation of any state or federal statute, rule or regulation. Motor vehicles which are required to have similar information affixed thereto pursuant to requirements of a regulatory agency of the state or federal government are exempt from the provisions of this subsection.

4. The provisions of subsection 3 of this section shall not apply to construction of public works for which the contract awarded is in the amount of two hundred fifty thousand dollars or less.]

[290.300. Any workman employed by the contractor or by any subcontractor under the contractor who shall be paid for his services in a sum less than the stipulated rates for work done under the contract, shall have a right of action for double whatever difference there may be between the amount so paid and the rates provided by the contract together with a reasonable attorney's fee to be determined by the court, and an action brought to recover same shall be deemed to be a suit for wages, and any and all judgments entered therein shall have the same force and effect as other judgments for wages.]

[290.305. No person, firm or corporation shall violate the wage provisions of any contract contemplated in sections 290.210 to 290.340 or suffer or require any employee to work for less than the rate of wages so fixed, or violate any of the provisions contained in sections 290.210 to 290.340. Where workmen are employed and their rate of wages has been determined as provided in sections 290.210 to 290.340, no person, either for himself or any other person, shall request, demand or receive, either before or after such

workman is engaged, that such workman pay back, return, donate, contribute, or give any part or all of said workman's wages, salary, or thing of value, to any person, upon the statement, representation, or understanding that failure to comply with such request or demand will prevent such workman from procuring or retaining employment, and no person shall, directly or indirectly, pay, request or authorize any other person to violate this section. This section does not apply to any agent or representative of a duly constituted labor organization acting in the collection of dues or assessments of such organization.]

[290.315. All contractors and subcontractors required in sections 290.210 to 290.340 to pay not less than the prevailing rate of wages shall make full payment of such wages in legal tender, without any deduction for food, sleeping accommodations, transportation, use of small tools, or any other thing of any kind or description. This section does not apply where the employer and employee enter into an agreement in writing at the beginning of said term of employment covering deductions for food, sleeping accommodations, or other similar items, provided such agreement is submitted by the employer to the public body awarding the contract and the same is approved by such public body as fair and reasonable.]

[290.320. No public body, officer, official, member, agent or representative authorized to contract for public works shall fail, before advertising for bids or contracting for such construction, to have the department determine the prevailing rates of wages of workmen for each class of work called for by the public works in the locality where the work is to be performed as provided in sections 290.210 to 290.340.]

[290.325. No public body, officer, official, member, agent or representative thereof authorized to contract for public works shall award a contract for the construction of such improvement or disburse any funds on account of the construction of such public improvement, unless such public body has first had the department determine the prevailing rates of wages of workmen for the class of work called for by such public works in the locality where the

8 work is to be performed and such determination has been made a
9 part of the specifications and contract for such public works.]

2 [290.330. The department after investigation, upon
3 complaint or upon its own initiative, shall file with the secretary
4 of state a list of the contractors and subcontractors who it finds
5 have been prosecuted and convicted for violations of sections
6 290.210 to 290.340 and such contractor or subcontractor, or
7 simulations thereof, shall be prohibited from contracting directly
8 or indirectly with any public body for the construction of any public
9 works or from performing any work on the same as a contractor or
10 subcontractor for a period of one year from the date of the first
11 conviction for such violation and for a period of three years from
12 the date of each subsequent violation and conviction thereof. No
13 public body shall award a contract for a public works to any
14 contractor or subcontractor, or simulation thereof, during the time
15 that its name appears on said list. The filing of the notice of
16 conviction with the secretary of state shall be notice to all public
17 bodies and their officers, officials, members, agents and
representatives.]

2 [290.335. If it is found that a public body, contractor or
3 subcontractor has not complied with any of the terms of sections
4 290.210 to 290.340, the department shall give notice of the precise
5 violation in writing to such public body, contractor or
6 subcontractor. Sufficient time may be allowed for compliance
7 therewith as the department deems necessary. After the expiration
8 of the time prescribed in said notice, the department may in
9 writing inform the attorney general of the fact that such notice has
10 been given and that the public body, contractor or subcontractor or
11 the authorized representative or agent thereof to whom it was
12 directed has not complied with such notice. Upon receipt thereof,
13 the attorney general shall at the earliest possible time bring suit
14 in the name of the state in the circuit court of the county in which
15 such public body is located or where any such contractor or
16 subcontractor is engaged in any public works to enjoin the award
17 of such contract for a public works, or any further work or
payments thereunder if the contract has been awarded, until the

requirements of such notice are fully complied with. The court may issue a temporary restraining order with due notice to the defendant in such action. The plaintiff shall in any such injunctive action post an adequate bond to be set by the circuit judge. Upon final hearing thereof, if the court is satisfied that the requirements of the notice by the department to the defendant were not unreasonable or arbitrary, it shall issue an order enjoining the awarding of such contract for a public works, or any further work or payments thereunder if the contract has been awarded, until the notice is fully complied with. Such injunction shall continue operative until the court is satisfied that the requirements of such notice have been complied with and the court shall have and exercise with respect to the enforcement of such injunctions all the power in it in other similar cases. Both the plaintiff and defendant in such action have the same rights of appeal as are provided by law in other injunction proceedings.]

[290.340. Any officer, official, member, agent or representative of any public body, contractor or subcontractor who willfully violates and omits to comply with any of the provisions and requirements of sections 290.210 to 290.340 shall be punished for each violation thereof by a fine not exceeding five hundred dollars, or by imprisonment not exceeding six months, or by both such fine and imprisonment. Each day such violation or omission continues shall constitute a separate offense as contemplated by this section.]

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